



Supreme Court Answers the Question of Who Qualifies as a Supervisor

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Our article, "[Questions Raised Regarding Who Qualifies as a Supervisor](#)," noted that, in a week filled with big decisions, the U.S. Supreme Court answered those questions in *Vance v. Ball State University*, Docket No. 11-556, by adopting a narrow and generally employer-friendly definition of "supervisor" for vicarious liability under Title VII.

The petitioner, Maetta Vance, a catering assistant in University Dining Services at Ball State University and the only African-American individual on the staff, sued her employer alleging that Sandra Davis, a catering specialist, and another co-worker created a hostile work environment through physical acts and racial harassment. Vance asserted that Davis was a supervisor within the meaning of Title VII and, therefore, she need not prove that the respondent was negligent in responding to complaints of harassment; rather, Vance alleged, Ball State was liable because Davis' actions were imputed to the university.

The district court granted the respondent's motion for summary judgment, explaining that the alleged harasser (Davis) was merely a co-worker and did not qualify as a supervisor for the purposes of respondeat superior liability under Title VII. The U.S. Court of Appeals for the 7th Circuit affirmed. Notably, both courts found that Ball State had an adequate system in place for reporting and investigating claims of harassment under Title VII and, therefore, could not have been negligent.

In a 5-4 decision, the Supreme Court affirmed the 7th Circuit, holding that "an employee is a 'supervisor' for purposes of vicarious liability under Title VII only if he or she is empowered by the employer to take tangible employment actions against the victim." Under Title VII, an employer's liability for workplace harassment depends on the status of the harasser. Where the harassing employee is the victim's co-worker, the court applies a negligence standard: an employer is liable only if it knew or should have known of the harassing conduct and failed to take prompt and corrective immediate action to address it.

The court found, however, that a broad definition of "supervisor" is not necessary to guard against those concerns. In such cases, a victim can prevail simply by showing that the employer was negligent in permitting the harassment to occur, and, the court said, "the jury should be instructed that the nature and degree of authority wielded by the harasser is an important factor in determining negligence."

negligence.

Ultimately, even though the court confirmed that the narrow definition of supervisor remains the law, it is clear that harassment prevention training is critical to defending against such claims no matter who the alleged harasser is. It would be difficult for a plaintiff to show an employer is negligent where the employer maintains a well-publicized policy and procedure to handle harassment complaints and where all employees are regularly trained on that policy and procedure and appropriate workplace behavior.

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